

## Department of Homeland Security

## §217.4

the applicant meets all other program requirements.

[62 FR 10351, Mar. 6, 1997, as amended at 62 FR 50999, Sept. 30, 1997; 64 FR 42007, Aug. 3, 1999; 67 FR 7945, Feb. 21, 2002; 68 FR 10957, Mar. 7, 2003; 73 FR 67712, Nov. 17, 2008; 73 FR 79597, Dec. 30, 2008; 75 FR 15992, Mar. 31, 2010]

### §217.3 Maintenance of status.

(a) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(b) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States after a departure to foreign contiguous territory or adjacent island for the balance of his or her original Visa Waiver Pilot Program admission period if he or she is otherwise admissible and meets all the conditions of this part with the exception of arrival on a signatory carrier.

[62 FR 10351, Mar. 6, 1997]

### §217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.*

(1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination,

or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act and applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available